BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to investigate the use of expense caps in the earnings calculation for Nebraska universal service fund support.	)))))	Application No. NUSF-64

COMMENTS OF THE RURAL INDEPENDENT COMPANIES

I. Introduction

The Rural Independent Companies (the "Companies")[1] hereby submit their comments in response to the Nebraska Public Service Commission's (the "Commission") Order Seeking Comment entered in this proceeding on October 10, 2007 (the "Order") and to the Erratum and Order Extending Comment Deadline entered in this proceeding on November 2, 2007 (the "Erratum"). The Companies appreciate the opportunity to provide their comments regarding the Order, the attachment to the Order which is entitled "A Method for Developing Cost Caps for NUSF Funding" (the "Methodology") to estimate a threshold for allowable total costs for carriers receiving Nebraska Universal Service Fund ("NUSF") support and to the Erratum.

Thus far in the Commission's consideration of this docket, a Workshop has been held and the Commission has requested and received comments in response to a series of questions. The Companies participated in the Workshop and among the suggestions presented by the Companies at the Workshop were that the Commission should articulate and evaluate the policies to be served by the potential establishment of expense caps for

[1] Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telco, Inc., Consolidated Telcom, Inc., Consolidated Telephone Company, Curtis Telephone Co., Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Co., K. & M. Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telecom Inc., and Three River Telco.

NUSF High Cost Program support. In the Comments that were jointly submitted by the Companies and by the Rural Telecommunications Coalition of Nebraska (the "Coalition") earlier this year, the Commission was urged to focus on the policy aspects of possible implementation of expense caps prior to focusing on any specific methodology concerning expense caps.[2] For the reasons explained below, the Companies not only continue to believe that articulation by the Commission of the policies to be served by possible implementation of expense caps is necessary, but further, the Companies find that the Order does not contain any articulation of a policy basis for proceeding with this docket.

In addition to the lack of an explanation regarding the policy that the Commission may be seeking to serve through the possible implementation of expense caps, the Companies submit that reasonable and adequate mechanisms are currently in place to assure that NUSF High Cost support is used for its intended purposes and to support reasonable expenses. Finally, the Companies have several concerns regarding the proposed methodology for implementing expense caps. Among the concerns regarding the appropriateness of the proposed Methodology are apparent errors and omissions in the data set used to construct the regression equation, the impact of the data errors on the regression equation, and the narrow upper boundary upon which a cost review may be triggered.

II. Existing Commission Policy Regarding Oversight of Carrier Costs

As a predicate to the Commission's establishment of a long-term universal service funding mechanism for the State of Nebraska, the Commission issued Progression Order No. 2 in Application No. NUSF-26. Progression Order No. 2 focused on the policies

[2] *See,* Comments of the Companies and the Coalition at pp. 2-5 (April 6, 2007) (the "April Comments").

stated by the Legislature in the Nebraska Telecommunications Universal Service Fund Act (the "NTUSFA").[3] In the Progression Order, the Commission specifically sought comment on a tentative goal to "have reasonable oversight on subsidized costs."[4] In its discussion of this tentative goal (referred to in the quote below as the fifth goal), the Commission stated as follows:

> This section [86-323] provides that telecommunications companies must use the support only for the provision, maintenance and upgrading of facilities and services for which support is intended. The Commission believes that it is important to ensure that the providers which receive support are accountable for using that support in a manner which comports which [sic] the original legislative directives enacted through specific rules, regulations and orders of the Commission. Providers must use the support only for the provision, maintenance and upgrading of facilities and services for which support is intended. *However, we believe that the fifth proposed goal is adequately addressed in goal b) supra, which provides that support shall be used for its intended purpose* [footnote omitted] *and any support derived from the NUSF must be explicit. The Commission believes that adopting the proposed fifth goal would be repetitive.* (emphasis added)[5]

Based upon the foregoing reasoning, the Commission did not include "reasonable oversight of subsidized costs" in its final list of the goals for the long-term NUSF support mechanism. Clearly, when the Commission previously considered whether carrier costs should be subject to oversight, i.e. establishment of expense caps, it was concluded such regulation was unwarranted.[6] Thus, the obvious question is what has changed since Progression Order No. 2 was entered in August 2002 that now warrants implementation of expense caps as proposed in the Methodology?

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[3] *Neb. Rev. Stat.* Sec. 86-1404 (Reissue 1999), recodified as *Neb. Rev. Stat.* Sec. 86-323 (2006 Cum. Sup.).

[4] Application No. NUSF-26, Progression Order No. 2 at p. 4.

[5] *Id.* at p. 10.

[6] *See,* Section IV of these Comments, *infra,* for discussion of current Commission oversight of NUSF High Cost Program.

III. The Order does not Provide an Answer to the Question as to Why Implementation of Expense Caps is Now Warranted.

As stated in their April Comments, the Companies continue to believe that it is very important for the Commission to articulate the regulatory policies that are intended to be supported through implementation of the Methodology. The Commission has not identified any such policies in the Order.

The Order does not link the establishment of cost caps for NUSF funding to the legislative statement of purpose that the NUSF "ensures that all Nebraskans, without regard to their location, have comparable accessibility to telecommunications services at affordable prices." *Neb. Rev. Stat.* § 86-317 (2006 Cum. Sup.) Similarly, the Commission provides no indication in the Order regarding its view of the relationship between the Methodology and the policies which the Legislature has declared that the NTUSFA shall serve. *See, Neb. Rev. Stat.* § 86-323 (2006 Cum. Sup.) The Legislature has specifically directed that the NUSF shall be implemented in a manner that serves such policies, stating:

> The fund shall provide the assistance necessary to make universal access to telecommunications services available to all persons in the state consistent with the policies set forth in the Nebraska Telecommunications Universal Service Fund Act.

Neb. Rev. Stat. § 86-324(1) (2006 Cum. Sup.)

The absence of an explanation in the Order as to how the policies of the NTUSFA will be supported by implementation of the Methodology reasonably leads to presentation of the same questions that were presented by the Companies in their April Comments, namely:

> What policy or policies should the Commission seek to promote through the potential implementation of expense caps in this docket?

If incenting investment in plant needed to support advanced services is a desired policy, how do expense caps support such an incentive?[7]

The Companies continue to believe that the Commission should address these policy-oriented questions, however, as described in the following section of these Comments, the Companies believe that current oversight of the NUSF High Cost Fund by the Commission is sufficient without the implementation of expense caps.

IV. Implementation of Expense Caps is Unwarranted in Light of the Commission's Current Oversight of NUSF High Cost Program Support.

The Commission has implemented a number of measures to oversee the operations of the NUSF High Cost Program. In the Order establishing the Permanent NUSF Funding Mechanism, the Commission described several of these measures.[8] The Support Allocation Methodology or "SAM" is based upon the Benchmark Cost Proxy Model ("BCPM") and a common set of cost inputs to estimate forward-looking loop costs.[9] The Commission found that the SAM "provides a fair and reasonable process in which to allocate NUSF support to Nebraska eligible telecommunications carriers ("NETC") providing service to high-cost areas."[10] In requiring the use of the BCPM in connection with the SAM, the Commission caused the SAM to reflect "the costs of a

[7] In addition to these two questions, the Companies respectfully refer the Commission's attention to the remaining eight questions set forth in the Memorandum submitted to the Commission at its January 31, 2007 Workshop concerning this docket which the Companies continue to believe warrant consideration by the Commission.

[8] *In the Matter of the Nebraska Public Service Commission, on its own Motion, seeking to establish a long-term universal service funding mechanism,* Application No. NUSF-26, Findings and Conclusions (Nov. 3, 2004).

[9] *Id.* at para. 46.

[10] *Id.* at para. 49.

most efficient carrier."[11] The Commission also determined that the earnings levels for NETCs should continue to be controlled through the use of the NUSF-EARN form.[12]

In addition, the Commission recently confirmed that a rural local exchange service benchmark should remain in place for NETCs.[13] Further, the Commission has adopted reporting requirements applicable to all ETCs mandating annual certification that all NUSF High Cost Program support has been used for proper purposes as required by statute and Commission Regulations. Such annual reporting requirements include the filing of a 5-year service quality plan.[14]

Each of the foregoing regulations is designed by the Commission to assure that the NUSF High Cost Program is administered in a fair and reasonable manner. Establishment of expense caps is an unwarranted addition to this regulatory program.

V. Implementation of Expense Caps would not Promote Carrier Investment in Infrastructure Needed to Provide Advanced Telecommunications and Information Services at Affordable Rates

In an environment that promotes investment in telecommunications infrastructure needed to provide access to advanced telecommunications and information services, additions to the regulatory requirements associated with the operation of the NUSF, such as would occur through implementation of the Methodology, should reflect the regulatory

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[11] *Id.* at para. 50.

[12] *Id.* at para. 61.

[13] *In the Matter of the Nebraska Public Service Commission, on its own Motion, to make adjustments to the universal service fund mechanism established in NUSF-26,* Application No. NUSF-50, Order at paras. 21-25 (Dec. 19, 2006).

[14] *See, In the Matter of the Nebraska Public Service Commission, on its own Motion, Seeking to Establish Guidelines for the Purpose of Certifying the Use of State Universal Service Support,* Application No. NUSF-66, Order Requiring Annual Certification Filings (May 15, 2007); and Title 291, Chapter 5, Rule 009.04 of the Commission's Telecommunications Rules.

goals and also be minimized in order to create the stability and predictability required to support decisions by carriers to make long-term investments. Several of the Commission's recent dockets involve, at least in part, a focus on the theme of administering the NUSF in a manner that promotes investment in the infrastructure needed to provide access to basic, as well as advanced, services. Notably, such dockets include NUSF-65 in which broadband deployment standards are under study. Further, a fundamental underpinning of the establishment of the permanent NUSF in Application NUSF-26 was the establishment of a Support Allocation Methodology or SAM that promotes investment of NUSF support in the high cost areas of the State. The SAM is based upon forward-looking economic costs ("FLEC") which, by definition, utilize the low cost, most efficient network for provisioning service.[15] This fact leads to the obvious question as to what rational basis exists to support implementation of expense caps through an econometric model such as that set forth in the Methodology?

The Order provides no explanation other than the statement that:

> In fairness to carriers and ratepayers, it is the Commission's responsibility *to ensure that costs are accurately calculated* to the best of our ability. (emphasis added)[16]

This statement suggests that the Commission is seeking to establish a process to provide assurance that recipients of NUSF support are accurately performing *accounting functions.*[17] However, a cursory review of the Methodology reveals that it is not based

[15] *See,* Application No. NUSF-26, Progression Order No. 5, para. 42 at p. 11-12.

[16] Order at p. 1.

[17] Audit requirements applicable to remittances to the NUSF were established by the Commission in Application No. NUSF-33.

upon accounting principles, but rather is based upon an economic regression analysis.[18] Thus, the Companies are unable to identify any nexus between the above-quoted statement from the Order and the ends that the Methodology are apparently intended to achieve.

VI. The Proposed Methodology For Developing Cost Caps for NUSF Funding Contains a Number of Deficiencies.

Notwithstanding the lack of articulation of a policy basis for this docket and the Companies' position that implementation of expense caps is unwarranted, because the Commission, in the Order and the Erratum, has requested comment on the Methodology, the Companies will provide their analysis of the Methodology. The Companies will, among other points, present the reasons that the Methodology would not serve as a proper basis "to estimate a threshold for allowable total costs."[19]

A. Errors and Omissions in the Data Set

The Companies have reviewed both data sets[20] that were used by the Commission to develop the parameter results from Table 1 and the boundary described in equation 1.5 that the Commission proposes to use to set a threshold for triggering an actual or potential cost review. While the revised data set corrects some errors that were identified in the initial data set, it still contains multiple errors. A complete listing and explanation of errors and potential errors that the Companies have identified is contained in the Companies Confidential Exhibit A (subject to the Protective Order).

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[18] Order, Appendix A at p. 1.

[19] *See,* Order at p. 1.

[20] Data released in connection with the Protective Order used to develop the Methodology contained in the Order and the Erratum.

Given that the data is subject to the Protective Order, the Companies will describe in general terms the nature of the errors identified in the data for the benefit of parties that have not executed the Protective Order and thus do not have access to the Companies Confidential Exhibit A. Two carriers have identical total costs for two separate entries. While this is theoretically possible, the Companies believe that this instance should be reviewed, as it could be the result of a data entry error. It also appears that data for carriers that have merged over the time period for which the Commission collected data may not be correct, that is, the data for all independent variables may not reflect the appropriate pre-merger and post-merger values. There are also numerous instances in which the total cost and plant in service numbers do not match company-supplied data for these variables.

In addition to apparently inaccurate data within the data set used by the Commission, another concern the Companies have regarding the data set is that it does not contain the same number of entries for each carrier. The Commission has requested comment on the issue of whether the Commission should use the same number of data points (or years) for each company.[21] The answer to this question is yes. The Companies submit that by including a varying number of observations for different carriers, the Commission is inappropriately placing greater weight on carriers for which it has a greater number of observations, because the data for such carriers constitutes a greater proportion of the total data population than it would if the data base included data for all carriers for the same years.

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[21] *See* Erratum at p. 2.

The Companies are aware that cooperatives providing local exchange service in Nebraska are not required to file Form M information, therefore, data for cooperatives is currently not included in the data base. While the Companies do not believe that the Commission should require cooperatives to file all schedules associated with Form M, the Companies recommend that the Commission should issue a data request to obtain the necessary Form M information from cooperatives with which to populate the data base.

While the reason that information regarding cooperatives is not currently included in the data base is readily apparent, there is no obvious explanation for the varying numbers of entries for each company for which data is included in the data base. All companies represented in the data base are presumably required to file Form M information. Therefore, data should be available to populate the data base with the same number of entries for each company. If the Commission is using some criteria to exclude data for selected companies for selected years from the data base, the Commission should disclose the criteria that are being used to exclude certain data. Excluding data could bias the data set, as judgments are being applied, perhaps arbitrarily, to determine which data to include and exclude. For example, excluding data for given companies for certain years because the total costs appear to be extraordinary, in the Commission's judgment, would reduce the variation in costs upon which the Commission is developing its proposed Methodology. The reduction in variation of costs in turn would reduce the upper boundary above which company costs may be reviewed. In order to accurately model estimated total costs and upper boundaries for such costs, it is necessary to include data for all companies for all years to adequately capture the natural variation that occurs in total costs.

There also may be errors in the data set in addition to those identified in the Companies Confidential Exhibit A. For example, the deviations between the total cost and plant in service data used by the Commission and reported by carriers have been identified only regarding the Companies. There may be similar errors for other carriers that have not been identified by the Companies, as the Companies do not have access to reported data for other carriers to compare to the Commission's data set.

The Commission requests comment on whether access lines sold to competitors leasing unbundled network elements ("UNEs") should be included in the access line count in the data set.[22] Access lines that are sold as UNEs should be included in the access line count. The Commission is forecasting total costs in order to develop an upper boundary proposed to be used to trigger an actual or potential cost review by the Commission. The costs included in the total costs are presumably for all access lines provided by a company, both access lines provided directly to end-user customers and leased as UNEs to other carriers. Therefore, because the costs to provide access lines as UNEs are included in total costs, the access lines provided as UNEs should be included in the access line count to maintain consistency between the total costs and the data for independent variables being used to forecast total costs.

B. Deficiencies in the Methodology

Analysis by the Companies' consultants discloses that the data errors identified by the Companies have a substantial impact upon the Commission's proposed regression equation used to estimate total cost, which, in turn, impacts the upper boundary proposed to be used to trigger an actual or potential cost review by the Commission. The impact of

[22] *See* Erratum at p. 2.

data errors upon the Methodology is demonstrated by the changes recommended by the Commission after the corrected data set was provided with the Erratum. For example, after the Commission made corrections to data errors identified in the data set released in conjunction with the Order, the Commission substantially changed the regression equation it proposed for use to compute the upper boundary proposed to be used to trigger an actual or potential cost review by the Commission. Several independent variables were added and one independent variable was deleted.

The Companies conducted tests of the regression equation to determine sensitivity to changes in the Methodology. The Companies observed that changing data for only one independent variable for two companies caused the regression equation to change significantly.[23] Given that small changes in the data produces significant changes in the regression equation, the Companies submit that it is essential that the Commission thoroughly evaluate and correct the data before proceeding with developing and evaluating a proposed Methodology. In the alternative, the Commission should recognize the Methodology's sensitivity to data changes, and as a consequence, increase the upper boundary used to trigger an actual or potential cost review.

The current Methodology does not appear to adequately reflect economies of scale, in other words, declining per line cost as the company size increases, for the larger companies in the data set. For example, the graph in the Companies' Confidential Exhibit B (subject to the Protective Order) illustrates that the Methodology produces a

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[23] Specifically, correcting the data for only one independent variable for seven observations caused the sign on the plant in service variable and the households * access lines variable to change from positive to negative. A negative sign on the plant in service variable would cause costs to decrease as the amount of plant in service increases, which is a counter-intuitive result.

greater per line cost for companies with 300,000 or greater access lines than it does for companies with 30,000 to 250,000 access lines. The Companies assert that it is not reasonable to allow the largest companies in the data set to incur per line costs that are greater than companies with approximately 30,000 access lines, which are about one-tenth the size of the largest companies.

The deficiencies discussed above were discovered during the limited period allowed for review following the issuance of the Erratum. There may be additional deficiencies that have not been identified at this point. However, the Companies cannot stress enough that the impact of the data errors on the regression equation should be fully investigated and addressed by the Commission. As discussed further below, significant changes in the regression equation and the upper boundary used to trigger an actual or potential cost review cause the Methodology to operate in an unpredictable manner that is contrary to statute.

C. Suggested Adjustment to the Methodology

As indicated above, the regression equation in the Methodology is extremely sensitive to changes in the data set. The corrections in the data set made by the Commission in the Erratum significantly changed the regression equation, and also considerably narrowed the amount by which the upper boundary exceeds expected total costs for each company. For example, in the Methodology described in Appendix A to the Order, the upper boundary for total costs above which an actual or potential cost review would be triggered was about $7 million greater than the expected, or forecasted total cost for each company. In the Erratum, the upper boundary for total costs above which an actual or potential cost review would be triggered was reduced to about $1 million greater than the expected total cost for each company. This amount allows for very little variance for medium and large companies. For example, an upper boundary of about $1 million greater than the total expected cost of $1 million would allow a company to increase its total costs by 100 percent before triggering an actual or potential cost review. If a company had an expected total cost of $5 million, an upper boundary of about $1 million greater than the total expected cost would allow a company to increase its total costs by 20 percent before triggering an actual or potential cost review. If a company had an expected total cost of $20 million, an upper boundary of about $1 million greater than the total expected cost would allow a company to increase its total costs by only 5 percent before triggering an actual or potential cost review. Given that the upper boundary allows mid-size and large companies relatively little leeway for total cost variance, the Companies recommend that the Commission consider adjusting the method used to calculate the upper boundary to allow for a greater variance in total costs before triggering an actual or potential cost review. As discussed above, adjusting the method used to calculate the upper boundary to allow for a greater variance in total costs before triggering an actual or potential cost review would also help adjust for the fact that the regression equation used to construct the upper boundary appears to be very sensitive to changes in the data. As discussed in greater detail below, without such an adjustment to the upper boundary, the Methodology operates in an unpredictable and arbitrary manner that is contrary to statutory directive.

In developing the regression equation after correcting the data set for errors identified above, the Companies recommend that the Commission should consider other potential independent variables that may impact total costs. For example, in cases where companies are spread across various locations with significant differences in terrain or distance from major population centers, introduction of a spatial element might prove useful in the Methodology. Another independent variable the Commission should consider is density. The Commission has found that density is a significant variable in estimating loop costs as part of the SAM used to distribute NUSF High Cost Program support. It is possible that density may also impact company total costs.

The Commission requests comment on whether it should update the underlying information periodically.[24] The Companies recommend that the data should be updated annually, and that the data set should be limited to a few years of the most current data in order to capture the effects of inflation on total cost. If the Commission does not update the data on an annual basis, the effects of inflation will cause more and more companies' costs to approach or exceed the upper boundary upon which an actual or potential cost review is triggered.

D. The Proposed Methodology is Inconsistent With NUSF Policies and Goals.

As discussed above, the proposed Methodology is extremely sensitive to changes in the data. This means that as the data changes, the Commission may need to change the regression equation and the upper boundary associated with the regression equation. The significant lowering of the upper boundary used to trigger an actual or potential cost review between the Methodology in the Order and the Methodology in the Erratum is evidence of this fact. If the Commission continues to update the underlying information periodically and updates the Methodology as the data set changes, further significant changes in the upper boundary are likely to occur. Significant shifts in the upper

[24] *See* Erratum at p. 2.

boundaries upon which an actual or potential cost review will be triggered indicate that the Methodology likely violates the statutory requirement that support should be predictable.[25] In other words, if the upper boundaries upon which an actual or potential cost review will be triggered vary from year to year, it will be difficult to predict whether a company may have some costs disallowed from its earnings calculation, which may in turn affect the amount of NUSF support a company receives. This result can be reasonably expected to prompt a rational response from a recipient company to reduce its capital expenditures which would otherwise be made to provide the infrastructure for advanced information and telecommunications services as envisioned by the policies of the NUSF Act.

VII. There Are Additional Issues Regarding the Commission's Proposed Implementation of Expense Caps That Should be Commented Upon Prior to Potential Implementation.

The Commission indicates that if actual cost for a particular company falls above the upper boundary for allowable total costs computed by the Commission, the Commission will determine the cause of the disparity from expected costs and would need to approve that variance.[26] However, the Commission does not describe the process that it intends to use in reviewing the variance of actual total costs from the upper expected cost boundary. A proposal for the process of cost review should identify the data that will be examined and the standards that will be used to determine whether the cost variance is appropriate and will be approved.

[25] Neb. Rev. Stat. § 86-323(5) (2006 Cum. Sup.).

[26] *See* Erratum at Appendix A, p. 4.

Another issue that is not addressed by the Commission regarding the proposed implementation of expense caps is how any cost variance that is not approved by the Commission would affect NUSF support. Would the Commission treat unapproved cost variances as "disallowed" costs on the NUSF-EARN Form? How would "disallowed" costs, which are computed on a total cost basis, be processed for companies that file their NUSF-EARN form on an intrastate or supported services only basis? Would there be a period over which any possible reductions in NUSF High Cost Program support would be phased in to allow companies an opportunity to adjust their operations in light of expense caps? These are just a few of the many questions that would need to be addressed to determine how "disallowed" costs would affect NUSF support.

The Companies urge the Commission to develop a complete proposal to address the process of reviewing total cost variances above an upper cost threshold and the manner in which any "disallowed" costs will affect NUSF support and to release such a proposal for comment prior to the possible implementation of expense caps. The lack of a clear process for handling total cost variances above an upper cost threshold conflicts with the statutory requirement that NUSF support should be predictable,[27] as it will be impossible to predict the amount of support a company will receive if there are not clear policies or rules governing the manner in which costs are "disallowed" and the effect of "disallowed" costs on NUSF support distributions. As discussed above, a lack of predictable support would be contrary to the Commission's goals regarding continued investment in the network and the deployment of advanced telecommunications services,

[27] Neb. Rev. Stat. § 86-323(5) (2006 Cum. Sup.).

as companies will be reluctant to make such investments if the amount of NUSF High Cost Program support cannot be predicted from year to year.

VIII. The Commission's Proposed Implementation of Expense Caps Should, if Adopted, Have No Impact on the Commission's Review of an Eligible Telecommunications Carrier's Use of Federal USF Support and NUSF Support under Application Nos. NUSF-25/NUSF-66.

The Commission seeks comment on how the proposed expense cap methodology contained in the Order would interface with the Commission's review of an eligible telecommunications carrier's ("ETC") use of federal USF support and NUSF support under Application Nos. NUSF-25/NUSF-66. The Companies assert that the potential implementation of expense caps should have no impact on the Commission's review of an ETC's use of federal USF support and NUSF support. The purpose of the filing requirements adopted in Application Nos. NUSF-25/NUSF-66 is to ensure that federal USF support and NUSF support are being used for the intended purposes. A review of the information filed pursuant to Application No. NUSF-25, Progression Order No. 18 should be sufficient to determine whether a carrier is using federal USF support and NUSF support for the intended purposes. A potential finding by the Commission that a given carrier's total costs may be above a threshold amount determined by the Commission does not modify the manner in which a carrier uses federal USF support and NUSF support, which is the purpose for review under Application Nos. NUSF-25/NUSF-66.

IX. Conclusion

The Companies assert that the Commission should articulate the regulatory policies that are intended to be supported through the implementation of the Methodology before proceeding with the proposed implementation of expense caps. The Order does not identify any such policies.

The Companies believe that implementation of expense caps is unwarranted in light of the Commission's current oversight of NUSF high cost support. Earnings levels for NETCs are capped. Furthermore, the Commission requires that companies report information to ensure that federal USF support and NUSF support are being used for the intended purposes.

The Companies submit that implementation of expense caps would not promote carrier investment in infrastructure needed to provide advanced telecommunications and information services, as expense caps would reduce the predictability and stability of NUSF High Cost Program support, which would in turn cause carriers to reduce their network investments.

The Companies' analysis of the proposed Methodology for developing expense caps for NUSF funding has identified a number of deficiencies in the Methodology. There are numerous errors and omissions in both the Commission's original and revised data sets. The regression model is extremely sensitive to changes in the data set, as evidenced by the fact that the Commission significantly revised the regression model after revising the data set. The revised data set also significantly reduced the upper boundary that the Commission proposes to use to trigger a cost review. The Companies recommend that the Commission should examine adjusting the method used to calculate the upper boundary to allow for a greater variance in total costs before triggering a cost review to help account for the sensitivity to data changes.

The Companies believe that there are additional issues regarding the Commission's proposed implementation of expense caps that should be commented upon prior to potential implementation. For example, the process for conducting a review of costs and the manner in which cost "disallowances" would affect NUSF support are among the many issues that should be commented upon prior to the possible implementation of expense caps.

Date: November 14, 2007.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The original and five copies of the foregoing Comments were hand delivered on November 14, 2007, to the Nebraska Public Service Commission, 1200 N Street, Suite 300, Lincoln, Nebraska 68508, with a copy of such Comments mailed by first class mail, postage prepaid on the same date to Shana Knutson, Legal Counsel, Nebraska Public Service Commission, 300 The Atrium, 1200 N Street, Lincoln, NE 68508 and to legal counsel for the other parties who have filed comments in this docket.

Paul M. Schudel

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